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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,925	04/20/2004	Enrico Cappelletti	57637/1380	5906

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KRAMER LEVIN NAFTALIS & FRANKEL LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
1177 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

EXAMINER
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JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
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1618

NOTIFICATION DATE	DELIVERY MODE
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03/25/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

klpatent@kramerlevin.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/828,925	<b>Applicant(s)</b> CAPPELLETI ET AL.	
	<b>Examiner</b> D. L. Jones	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 51, 53-55, 57, 59, 61-70, 82, 84-86, 88, 90 and 107-109 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51, 53-55, 57, 59, 61-70, 82, 84-86, 88, 90, and 107-109 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **ACKNOWLEDGMENTS**

1. The Examiner acknowledges receipt of the amendment filed 12/20/07 wherein claims 1-50, 52, 56, 58, 60, 71-81, 83, 87, 89, and 91-106 are canceled.

**Note:** Claims 51, 53-55, 57, 59, 61-70, 82, 84-86, 88, 90, and 107-109 are pending.

## **RESPONSE TO APPLICANT'S AMENDMENT/ARGUMENTS**

2. The Applicant's arguments and/or amendment filed 12/20/07 to the rejection of the claims made by the Examiner under 35 USC 103, 112, and/or double patenting have been fully considered and deemed persuasive-in-part for the reasons set forth below.

### **Double Patenting Rejections**

I. The rejection of claims 51, 53-59, 61-70, 82, 84-86, 88, 90, and 107-109 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 7,226,577 is MAINTAINED for reasons of record in the office action mailed 10/9/07.

II. The provisional rejection of claims 51, 53-59, 61-70, 82, 84-86, 88, 90, and 107-109 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-87 of copending Application No. 10/542,202 is MAINTAINED for reasons of record in the office action mailed 10/9/07.

III. The provisional rejection of claims 51, 53-59, 61-70, 82, 84-86, 88, and 90 on the ground of nonstatutory obviousness-type double patenting as being

unpatentable over claims 1-21 of copending Application No. 11/165,721 is  
MAINTAINED for reasons of record in the office action mailed 10/9/07.

IV. The provisional rejection of claims 51, 53-59, 61-70, 82, 84-86, 88, and 90 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-57 of copending Application No. 11/352,156 is MAINTAINED for reasons of record in the office action mailed 10/9/07.

V. The provisional rejection of claims 51, 53-59, 61-70, 82, 84-86, 88, and 90 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 69-91 of copending Application No. 11/467,237 is MAINTAINED for reasons of record in the office action mailed 10/9/07.

VI. The provisional rejection of claims 51, 53-59, 61-70, 82, 84-86, 88, and 90 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 69-91 of copending Application No. 11/467,301 is MAINTAINED for reasons of record in the office action mailed 10/9/07.

VII. The provisional rejection of claims 51, 53-59, 61-70, 82, 84-86, 88, and 90 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 10-17, 20-23, 26, 29, 30, 35, 36, 39-42, 50, 60, 61, 64-67, 74, 80, 81, and 84-87 of copending Application No. 10/566,112 is MAINTAINED for reasons of record in the office action mailed 10/9/07.

**Note:** It is duly noted that Applicant has requested that the double patenting and provisional double patenting rejections be held in abeyance until allowable subject matter is indicated.

**112 Second Paragraph Rejections**

Applicant's arguments regarding the 112 second paragraph rejections have been considered and found persuasive-in-part.

All the 112 second paragraph rejections are WITHDRAWN except the following.

The rejections of claims 51 and 82 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention are MAINTAINED for reasons of record in the office action mailed 10/9/07 and those set forth below.

Rejections over claims 51 and 82 were made over the claims because of the phrase 'other linking group' which is vague and indefinite because it is unclear what other linking group(s) Applicant is referring to which are compatible with the instant invention.

Applicant asserted that the rejections should be withdrawn because one would understand what other linking groups Applicant is referring to based on pages 167-171 of the specification. In addition, Applicant asserts that since the phrase appeared in the allowed parent, the rejection should be withdrawn.

Applicant's arguments are not persuasive because (1) Applicant's is reminded that applications are considered on a case-by-case basis. Thus, the Examiner is not bound by the prosecution of another application. (2) Review of the specification does not set forth a clear definition of 'other linking groups'. Thus, while additional linking groups are disclosed in the specification, the claims are not limited to those of the

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specification. As a result, one cannot ascertain what 'other linking groups' Applicant is referring to which are compatible with the instant invention.

**103 Rejection**

The 103 rejection is WITHDRAWN for reasons of record. In particular, Applicant's arguments of unexpected results and the comparison of the prior art as set forth in the response filed 12/20/07 was found persuasive.

**COMMENTS/NOTES**

3. Applicant is respectfully requested to replace 'subject' with 'patient' in claims 65 and 67 to be consistent with the other pending claims and the specification.

4. In addition, Applicant is respectfully requested to replace 'N is 0' and 'P is 0' in the independent claims with 'N is absent' and 'P is absent' in the claims (e.g., independent claims 51 and 82).

5. The search was expanded over the full scope of the instant invention. In particular, the claims are distinguished over the prior art of record because the prior art neither anticipates nor renders obvious the inventions as set forth in independent claims 51, 82, and 107.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the

event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L. Jones/

D. L. Jones  
Primary Examiner  
Art Unit 1618

March 16, 2008